



Demystification of law for Women is the first illustrated book which step by step exposes the judicial bias against Indian women and the patriarchal assumptions underlying the Constitution.

Quoting original documents not readily available and the sections from Acts and Articles from the Constitution, the book reveals a hundred years of history of women's struggle against the continued bias.

A documentary of facts and figures with over hundred sketches, the book attempts to prove that the entire legal system is biased against women and that it helps to perpetuate, preserve and uphold oppression of women through religion and family law.

"Nandita Haksar and Anju Singh have, in the course of over 700 pages, successfully demystified the constitutional rights of equality and justice and argued for de facto deliverance of women in chains, through the only hard process of awakened struggles. If you want to build a movement to free women and restore them to their personhood, do buy and read this small but explosive book..."

*V.R. Krishna Iyer
in The Hindu*

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Illustrated Documentary



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Law for Women

Haksar/Singh

LANCER

Demystification of **LAW FOR WOMEN**



In order to perpetuate and reinforce male power man needs to have control over woman's body, her reproductive powers so that he can have control over the children and the family.... that explains why there are two standards of sexual morality

Text: NANDITA HAKSAR
Graphics: ANJU SINGH

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**LAW FOR
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"This book is dedicated to every Indian woman who dreams of a society based on equality, justice, and freedom--and has the courage to fight for the realisation of that dream."

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Anju Singh

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Printed at Classical Printers, Delhi.

ACKNOWLEDGEMENTS

It was Juliet and Anil who thought of making this an illustrated book. Sudip introduced me to Anju, who produced the sketches.

This book took a concrete shape while I was giving a series of lectures on Women and Law, as part of the first legal literacy programme introduced in women's colleges by the Department of Adult, Continuing Education and Extension, Delhi University. The enthusiasm of students and teachers of these colleges has been the immediate source of inspiration. I would like to specially mention the Vivekananda College, where I spent the longest period of time.

It is through sharing the anguish and pain suffered by my women clients and going through the long, complicated, often humiliating legal proceedings, that I got a real feel of the working of the legal system in our country. I hope this book will help women in conceptualising their experiences and arriving at a deeper understanding of the real sources of our oppression and exploitation.

The book is in every sense the product of the new feminist consciousness that has emerged in our country in the post-Emergency period. We learnt to analyse our everyday experiences, our fears, and our deeply felt hurt with the help of small women's organisations which provided strength and support in our personal struggles. Groups, like Saheli, helped build up self-confidence in women like me and many more sisters helped in less fortunate situations. We learnt that our individual problems were not personal, private affairs, but a part of our shared experience of oppression.

I would like to thank so many women friends who have at all times been warm, generous and encouraging, but it is not possible to name each of them individually.

This book does not represent a consensual viewpoint. We have serious differences in interpretation on

many issues. Here I have only analysed the women's problems from the legal point of view. And, therefore, the analysis is necessarily incomplete. The intention is to raise certain questions which can then be discussed in depth. This book could also serve as a handbook for activists.

Lastly, I would like to acknowledge the emotional and intellectual support from my mother, father, sister, and husband. They did not support (and perhaps still do not) many of these ideas. They often asked: "What is your alternative to the family?" My reply is that whenever any oppressed section of the population begins their struggle against injustice and exploitation, they do not begin with a blueprint for the future. The alternative will emerge out of the suffering and the struggle for greater equality, justice, and humanism. New, higher forms of human relations will grow, and there will be more meaningful relationships among people based on mutual love, respect, and understanding. It is with a faith in that future that this book has been written.

Nandita Haksar

PREFACE

This book has been received with enthusiasm and warmth from women all over the country. They have all been most generous in their encouragement. I cannot possibly name each one but I would like to specially thank 11 year old Kajal and eight year old Analu who are my youngest readers.

This second edition has been updated. Since we could not contact Anju, Pramode Ganapatye helped out with the last few drawings.

The Hindi edition will soon be out and the book is being translated into several regional languages.

August 14, 1986

Nandita Haksar

SOURCES and CITATIONS

We are giving you the sources and citations of the cases so that you can follow up any aspect you are particularly interested in:

History: The Status of Woman in India, a handbook for Hindu Social Reformers, Dayaram Gidunal, 1889; **A Social history of Modern India**, Kall Kinkar Datta, Macmillan, 1975; **A Testimony** (of our inexhaustible treasure) by Pandita Ramabai, 1907, published by Pandita Ramabai, Kedgaon, Pune District. The debates on one civil code can be referred to in the Constituent Assembly Debates or in the second volume of the Five Volume Book "The Framing of India's Constitution, Select Documents" edited by B Shiva Rau, Indian Institute of Public Administration, Delhi 1967.

Ambedkar's speech is taken from "Thus Spoke Ambedkar" Vol I (Selected speeches of Dr B R Ambedkar) edited by Bhagwan Das, Bheem Patrika Publications, Jullundhar 1977.

Report of the Hindu Law Committee is available in libraries and for other aspects of the debate on one civil code, read **An Indian Civil Code and Islamic Law**, Tahir Mahmood, N M Tripathi Pvt Ltd, 1976.

Other articles quoted:

1. **An open letter to the Chief Justice of India** on Mathura rape case by Prof Upendra Baxi, Vasudha Dhagamwar, Raghunath Kelkar and Lotika Sarkar, dated September 16, 1979.
2. Upendra Baxi, "**Patriarchy, Law and State**" Paper presented at the Second National Conference on women's studies, 1984--quoted on page 72.
3. Analytical Study of Recent Rape Cases in Vidarbha Region of Maharashtra by Dr Seema Sakhare of Balatkar Virodhi Manch, quoted on page 56.

4. "Saheli, the first four years", cites the figures of dowry deaths in Delhi' quoted on page 91.

CASES CITED:

1. **Tukaram v State of Maharashtra**
(1979) 2 Sec 143.

This is the Supreme Court judgement in Mathura's case cited on pages 58-65.

2. **Alamgir v State of Bihar**
A.I.R. 1959 S.C. 436.

This is the Supreme Court judgement on interpretation of the offence of adultery cited on pages 69-70.

3. **Sharad Birdhichand Sarda v State of Maharashtra**
A.I.R. 1984 S.C. 1622

This is the Supreme Court judgement in Manju-shree's case cited at page 88.

4. The judgement cited in Shanni Kaur's case on page 86 is the judgement of Shri K.B. Andley, Addl Sessions Judge, Delhi in **State v Udham Singh and others** dated 25th November, 1984.

5. **Smt Saroj Rani v Sudarshan Kumar Chaddha**
A.I.R. 1984 S.C. 1562

This is the Supreme Court judgement on restriction of conjugal rights which overruled the judgement of Justice P.A. Choudhary of the Andhra Pradesh High Court in **T. Sareetha v T. Venkata Subbaiah**.

A.I.R. (1983) A.P. 356

6. **Smt Harvinder Kaur v Harnander Singh Choudhary**
A.I.R. (1984) Delhi 66.

This is the judgement of the Delhi High Court cited at page 116.

7. **Mohd Ahmed Khan v Shah Bano Begum**
A.I.R. 1985 S.C. 945

This is the famous five-judge Supreme Court judgement on one Civil code cited on page 92.





Some of us feel that the law cannot help us at all
because the scales of justice are weighed **against**
us.

Who **makes** the law?
.....**Mr Member of Parliament**
Who **enforces** the law?
.....**Mr. Policeman**
Who **interprets** the law?
.....**Mr. Judge**



That is true. But it is also true that at so many crucial times in our lives we need to know the law....need to know how much it can **protect** us and whether it can do us **harm**.....

Let us see what are the common situations in which we need to know the law.....



If I want to marry the man of my choice can my parents force me to marry someone else? Do they have the right to beat me and lock me up? Can the man I love be put in Jail? Do I have no legal rights at all?



If you are above 21 years you have the legal right to take your own decisions and no one has the right to stop you.

If a man whistles at me or pushes me or harasses me is there any provision in law which can **protect** me?



Yes. Read **Section 509 of the Indian Penal Code:**

Whoever, intending to insult the modesty of any woman utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.



A new chapter has been added to the Indian Penal Code (IPC for short) to deal with the **cruelty of husbands and his relatives**. Read **Section 498-A**:

"Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."



Hold on. Even if there are legal provisions to help you, **YOU** have to have the **COURAGE** to take your own decisions. You have to suffer and struggle... and law can sometimes help in that struggle. Not always. We shall study the **UNDERLYING ASSUMPTIONS** of law to equip ourselves for our struggle for the Right to take our own decisions about our lives.

Why is it so difficult to take our own decisions? make our own choices? Because we have not been allowed to...our parents, our in-laws, our husbands our teachers and our SOCIETY takes all our decisions... how much we should study, who we should marry, where we should live after marriage, how many children we should have...whether we should work in an office...what we should do with our money...

I have an IDEAL daughter... she's sweet, gentle, quiet, devoted and obedient!

Our family's PRIDE and HONOUR are in your hands... don't ever let us down!

Our CULTURE depicts women famed for their selflessness, purity, sacrifice and loyalty... to be respected you must conform to our social norms.

You must not think about personal ambitions, freedom or independence... people will take you as a loose woman!



But why have we not spoken out? Why have we put up with this **injustice** and this **indignity**?



Because for the past thousands of years we have been told that man is **Superior** to woman. That is why it is the Man who is the Head of the Family.

We have been told that **Religion** says women must suffer in silence. That is our Fate.



And so our family and our religion
mystified the **FACT** that we are being
 oppressed and denied equality. We have
 to tear away this veil of
MYSTIFICATION.



Where does the **LAW** come in?

Law has helped to **strengthen** these
 beliefs and **uphold** religion and the family.

But if RELIGION says Man is superior, and the FAMILY has to have Man as the Head and the LAW supports this view then LAW must be right? No?

NO! If we believe we have the **right to equality**, and the freedom to take our own decisions then we must analyse all these assumptions for ourselves. We shall study Law and **DEMYSTIFY** it.



We shall see how religion supports inequalities within the family and how law strengthens this inequality. We shall see why it is so....

RELIGION AND LAW

First of all let us read exactly what these **spiritual leaders** and **religious texts** say about women's right to equality. Then we shall see how the law upholds their views.



Hindu law (even today) derives much of its ideas from the Laws of Manu written some centuries ago. Manu said:



"In childhood a female must be subject to her father..."

in youth to her husband,



when her lord is dead to her sons;



Here we have reproduced a page from the Laws of Manu for you, so you can read it for yourself...

48. As with cows, mares, female camels, slave-girls, buffalo-cows, she-goats, and ewes, it is not the begetter (or his owner) who obtains the offspring, even thus (it is) with the wives of others.

49. Those who, having no property in a field, but possessing seed-corn, sow it in another's soil, do indeed not receive the grain of the crop which may spring up.

50. If (one man's) bull were to beget a hundred calves on another man's cows, they would belong to the owner of the cows; in vain would the bull have spent his strength.

51. Thus men who have no marital property in women, but sow their seed in the soil of others, benefit the owner of the woman; but the giver of the seed reaps no advantage.

52. If no agreement with respect to the crop has been made between the owner of the field and the owner of the seed, the benefit clearly belongs to the owner of the field; the receptacle is more important than the seed.

53. But if by a special contract (a field) is made over (to another) for sowing, then the owner of the seed and the owner of the soil are both considered in this world as sharers of the (crop).

54. If seed be carried by water or wind into

made over to him cannot be resumed by the others.' Nār. refers the phrase 'I will give' to a verbal promise to give a girl, made without a libation of water. I read with Medh., Gov., Rāgh., Nand., and K. *akṛit sakṛit*, instead of *satām sakṛit*, 'those three (acts are done) once among good men.' The object of the verse is to show that a marriage is indissoluble, because a girl can be given once only (Kull., Nand.).

50. Vas. XVII. 8.

54. I read with Gov., Rāgh., and K. *bṛt*, 'the owner of the

Manu laid down the duties of a wife:

"Though destitute of virtue, or seeking pleasure (else where), or devoid of good qualities, (yet) a husband must be constantly worshipped as a god by a faithful wife."



Manu died so long ago. Why are we so concerned with what he says? We shall see that his ideas live on through the laws, courts and judges....

But what about the **Social reformers**? If we read their writings we will see even these religious leaders thought of women as a source of **EVIL** and **DESTRUCTION**. The message of Sri Ramakrishna was: *"Women and wealth have drowned the whole world in sin. Woman is disarmed when you view her as the manifestation of the Divine Mother."*



Tulsidas in his Ramayana expressed his contempt for women when he wrote that if women became independent it would lead to evil. Therefore he prescribed that:



"The drum, the village fool, the shudras, animals, women, all these are fit to be beaten."

What about other religions? Let us read the Holy Koran. There is a special chapter on women:

"Men have authority over women because Allah has made the one superior to the other, and because they spend their wealth to maintain them. Good women are obedient. They guard their unseen parts because Allah has guarded them. As for those whom you fear disobedience, admonish them and send them to beds apart and beat them. Then if they obey you, take no further action against them. Allah is high, supreme."

S. 19, 33-34

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سورة النساء

By parents and relatives,
To those, also, to whom
Your right hand was pledged,²⁴
Give their due portion,
For surely that is justice
To all things.

Section 6

24. *Give on the portions²⁴*
and maintainers of women,
Because God has given
The one more (strength)
Than the other, and because
They support them
From their means.
Therefore the righteous women
Are devoutly obedient and guard
In (the husband's) absence
What God would have them

guard²⁴
As in those women:
On whose part ye fear
Celibacy and ill-conduct,
Abstain from (first),²⁵
(First), refuse to share their beds
(And last) bat (them) lightly;
But if they return to obedience,
Seek not against them²⁶
Means (of annoyance).

وَالَّذِينَ هُمْ عَنْ آلِهِمْ وَنَحْلِهِمْ
صَلُّوا عَلَيْهِمْ إِنَّ اللَّهَ كَانَ غَفُورًا
رَحِيمًا

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ
وَالَّذِينَ هُمْ عَنْ آلِهِمْ وَنَحْلِهِمْ
صَلُّوا عَلَيْهِمْ إِنَّ اللَّهَ كَانَ غَفُورًا
رَحِيمًا



I'd rather earn and live in freedom and dignity.



Man provides for the woman so she must obey and serve him.



No, God made you inferior and you must allow man his privilege!

What about the Christians? Here are a few verses from the Holy Bible:

"Wives, submit yourselves unto your own husbands, as unto the Lord."

"For the husband is the head of the wife, even as Christ is the head of the Church: and he is the saviour of the body."

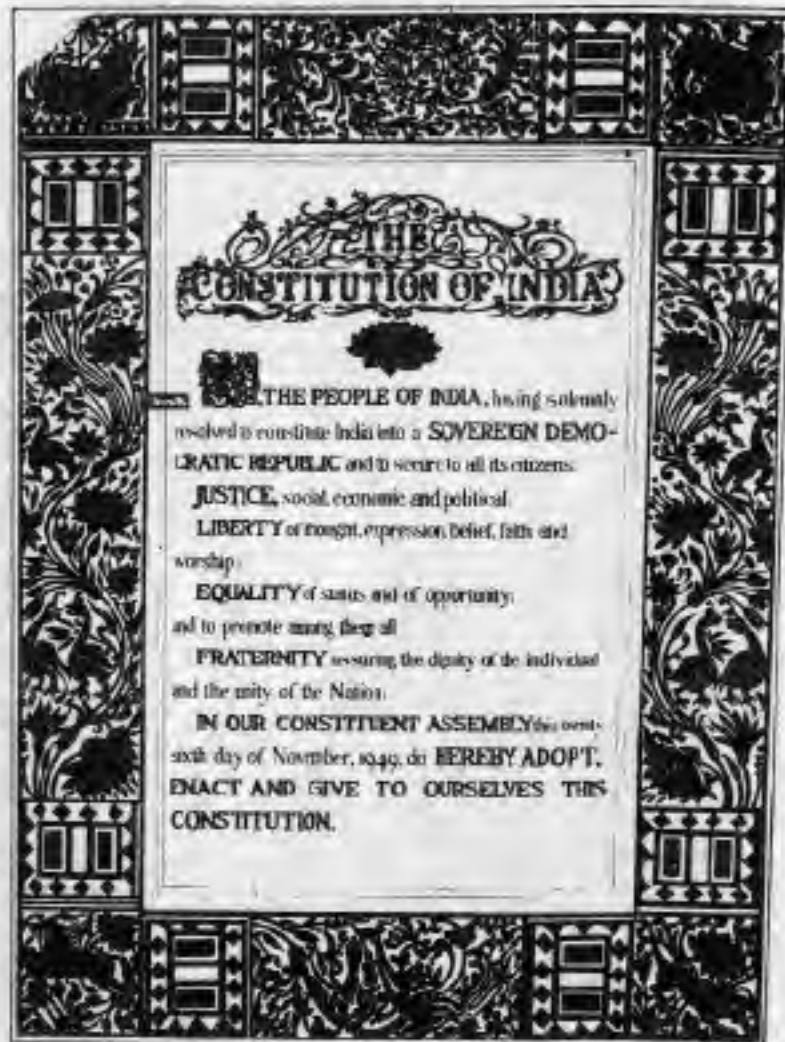
"Therefore as the Church is subject unto Christ, so let the wives be to their husbands in everything."

Eph 5. 22-24



So we see that all religions say that women are **inferior** to men and women owe men their loyalty and **obedience**.... What does the LAW say?

All laws in India derive their ultimate **sanction** and **authority** from the **Indian Constitution**. Let us see what the **MAKERS** of the Indian Constitution thought about women.... First let us read the **Preamble**:



Later Parliament added the words "socialist" and "secular" along with sovereign democratic republic.

Part 3 of the Constitution lays down certain **FUNDAMENTAL RIGHTS** that are guaranteed to every citizen by the State. Let us read the ones that are relevant for us:

Article 14: **EQUALITY BEFORE LAW**

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15: **PROHIBITION OF DISCRIMINATION ON GROUNDS OF RELIGION, RACE, CASTE, SEX OR PLACE OF BIRTH**

(1) The State shall not discriminate against any citizen on the grounds only of religion, race, caste, SEX, place of birth or any of them.

(3) Nothing in this article shall prevent the State from making any special provisions for women and children.

Article 16: **EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT**

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall on the ground of religion, race, caste, SEX, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of any employment or office under the State.

Our Fundamental Rights include the Right to certain **FREEDOMS** which are guaranteed to us by **Article 19**:

- (1) All citizens shall have the right —
- (a) to freedom of speech and expression;
 - (b) to assemble peacefully and without arms;
 - (c) to form associations or unions;
 - (d) to move freely throughout the territory of India;
 - (e) to reside and settle in any part of the territory of India;
 - (f) ~~to acquire, hold and dispose of property in any part of the territory of India, subject to the payment of taxes~~;
 - (g) to practise any profession, or to carry on any occupation, trade or business.

(In case you think we left out "f" by mistake we assure you we did not: "f" guarantees the right to property. But it was deleted from this part in 1979)

ARTICLE 21 gives the right to life and personal liberty:

"No person shall be deprived of his life or personal liberty except according to procedure established by the law."

So our Constitution guarantees us **EQUALITY** and **LIBERTY**, so what is all this fuss about those religious texts.....



Wait a minute. There is **one more** provision in the Fundamental Rights Chapter. The Constitution also guarantees the **Freedom of Religion**, under **Article 25**. Let us read the Article.

ARTICLE 25 (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right, freely to profess, practise and propagate religion."

How does this Article **affect** us? It is because of this Article we do not have equal rights to **property**; or equal rights within the **family**; we do not have the right to decide where we will **reside** after marriage, some of us are deprived of a right to **maintenance**, some of us have practically no way of getting a **divorce**, some of us are tried by an exclusively **male jury**, some of us cannot legally **adopt** a child.....



But why some of us have a **different** set of legal rights and others do not? Are we **ALL** not governed by the **same** law?



NO. **Hindus** are governed by **Hindu law**. **Muslims** have their own law and **Parsis, Christians, tribals** all have their rights determined by the law of their own communities.

That means we do not have **ONE CIVIL CODE**. We are each subjects of **personal law** i.e., the law of the community in which each person is born.



But there is ONE
CRIMINAL LAW, for
anyone who commits
murder. **Indian Law.**



There is ONE law for
someone who wishes
to enter into a contract
or take a loan,



or wants to raise an
industrial dispute....

But Law DIVIDES us in the most important area of
our life... our family life.



And so we have different rights:



I cannot be the Karta of the Hindu Joint Family or inherit the ancestral property



A man alone has the right to have four wives and can also unilaterally divorce his wives.



The only ground for divorce is adultery or change of religion. But even here the law is more strict against the woman. A man can get a divorce if his wife is guilty of adultery, but a woman can get a divorce only if a man is guilty of incestuous adultery, or bigamy and adultery, or rape, sodomy or bestiality.



The law supports such DOUBLE STANDARDS OF MORALITY!! But you said the Constitution Makers **guaranteed** us the right to **Equality** under **Article 14**?

Yes. But the same Makers of our Constitution refused to have one civil code by which women could get equal rights within the Family because they said that would **interfere** with the **religious rights** of various communities!

We grant you the right to Equality...

But if your religion says otherwise, we cannot interfere with the religious rights....



Isn't that what the BRITISH rulers said when they refused to have one civil code? Was that not part of their policy or **DIVIDE-AND-RULE**?



And the British were supported by a coterie of backward princelings and so-called religious leaders.

Together they supported inhuman practices like child marriages, enforced widowhood and sati ... on the ground of freedom of religion!

With the help of these princes and religious leaders the British codified the law on the family.

But what they codified was in fact the law and customs of the rich, upper castes, landed gentry.

However the customs among poor people, the tribals and low caste were often more favourable to women. Almost all poorer communities allowed widow re-marriage, some even recognized woman's right to property.

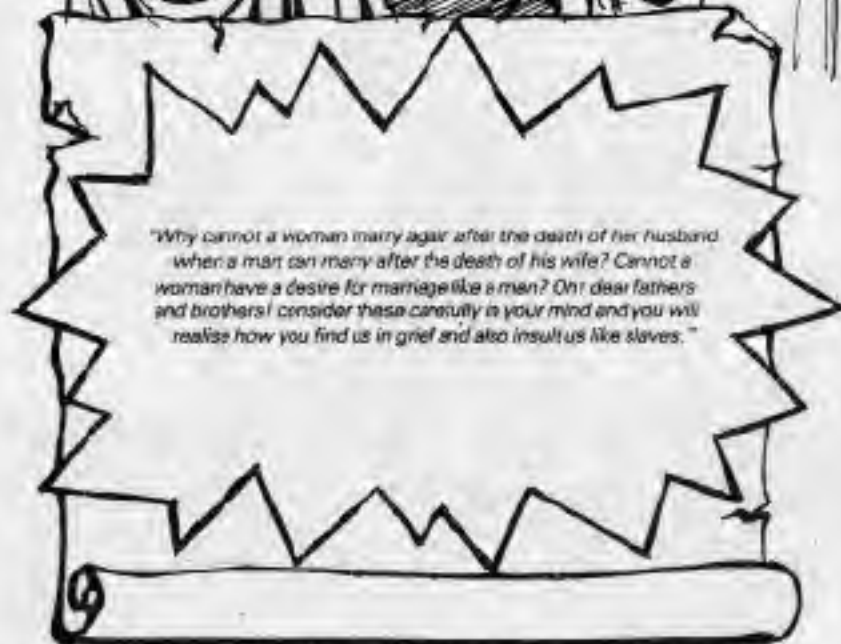
But the customs which were codified and have become the law were of the rich, who in their attempt to preserve their property, their lineage and their vast wealth always saw women as a threat to the patriarchal family.



So they turned a deaf ear to the appeals of the women who had to suffer every kind of humiliation. Listen to what some women wrote to the editor of Samachar Darpan in 1335:



"Why cannot a woman marry again after the death of her husband when a man can marry after the death of his wife? Cannot a woman have a desire for marriage like a man? Oh! dear fathers and brothers! consider these carefully in your mind and you will realise how you find us in grief and also insult us like slaves."



Religious leaders such as Pandit Panchanandi Guttulal Ghanashyamji of Bombay said he was for **enforced widowhood** because

"....the thing called woman is the crowning piece of all the objects of enjoyment in this world, and being subject to the special powers of the husband, is not like a house and capable of being enjoyed by her husband's relations. How much more incapable must she then be of being fit for remarriage and enjoyment by a stranger. Like a dining leaf used previously by another person, she is unfit to be enjoyed by another person."



Under pressure of the social reformers a Bill was introduced in July 1856 to make widow remarriage permissible under the law. And there was a hue and cry from the orthodox. One petition against the Bill was signed by **37,000** persons led by Raja Radhakanta Deb and the Pundits of Nadia, Trebeni and Bansberia.



Another petition enumerated the following reasons for the practice of enforced widowhood. Let us read them because the arguments are similar to the ones put forward today by the Pundits opposing one common civil code

Our Shastras and tradition say NO!



What about freedom of Religion?



It may cause conflicts among heirs...



She may claim all her deceased husband's inheritance....



1. No woman is allowed either by Shastras or established practice to enter into a marriage after the demise of the man with whom her marriage ceremony called *Bakrah* (*Kanyadan*) has been solemnized and no marriage can be annulled after the celebration of that ceremony.

2. Though the Act is intended to secure the good morals of the public yet the marriage of a widow, which it authorises, being opposed to the established practice of the country, the people will at once be inclined to consider that the Government wishes to interfere in their religion.

3. The Act declares that no property, money or ornament which may have been received by a widow from her late husband will be claimable by the heirs of her said husband on her contracting a second marriage. But it is not clearly stated therein as to whether her children by her first husband or those by the second (in case she may have both) will inherit her said property as '*Stri Dhan*'. Should the law maintain the right of both in equal proportion there will still happen constant disputes between them.

4. When a childless widow is married to a person she may very likely at his instigation fabricate some document in the shape of a will, etc and claim in virtue of it the whole inheritance of her deceased husband.

It might lead to a lot of litigation.



Her ex-husband's heirs may not allow it!

Someone might falsely implicate the heirs!

Appearing in court can ruin her reputation!



Who will look after her little ones? There are too many problems!



5. A Hindu woman has no claim to any property under the Shastras, except to what has been given by her husband such as ornaments, etc. as '*Stri Dhan*'. But when she is married a second time she may perhaps claim the whole property stating it to have been granted to her and this practice will by consequence give rise to constant litigation.

6. It would be difficult for a woman of rank to contract a second marriage because the heirs of her deceased husband will never consent to it and she has no chance of having any personal acquaintance or interview with those to whom she might be married. Ill-disposed persons will thus be enabled by this act maliciously to bring unfounded suits in the Criminal court complaining of alleged resistance on part of the heirs of the deceased husband to her being married to them notwithstanding her choice and consent. The court will thereupon certainly proceed to investigate the matter, and will either direct the personal attendance of the woman or depute under the rules in force some of its *Amils* or others to institute an enquiry. The woman may then repudiate the representation but her reputation is ruined without cause.

7. When a widow having a child of one or two years is to be married, is the child to go with her to the house of her second husband or is he to be brought up in that of the heirs of her first husband? In either case there is obviously great difficulty to be met.

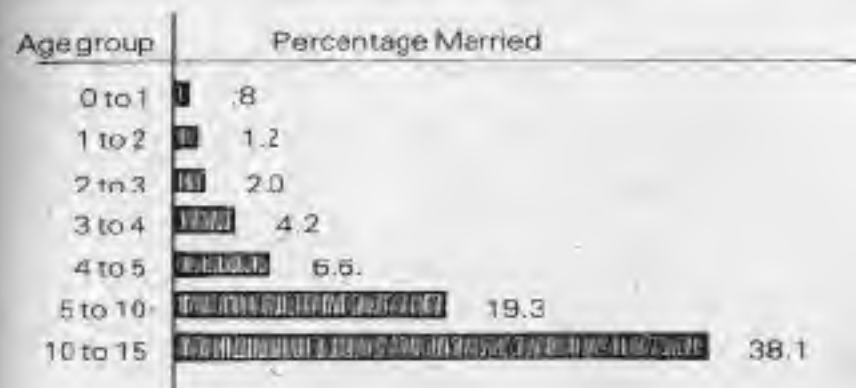
Women also organized themselves and joined the debate. They exposed the hypocrisy of the Pundits. **Pandita Ramabai Saraswati** (1858 to 1922), the great Sanskrit scholar and social reformer, went deep into the religious texts and came to this conclusion:



... but there are two things on which all these books, the Dharm Shastras, the sacred epics, the Puranas and modern poets, the popular preachers of the present day and orthodox high-caste men were agreed, that women of high or low caste, as a class were bad, very bad, worse than demons, as unholy as untruth, and that they could not get Moksha as men. The only hope of their getting this much desired liberation from Karma and its results, that is countless millions of births and deaths and untold suffering was the worship of their husbands...

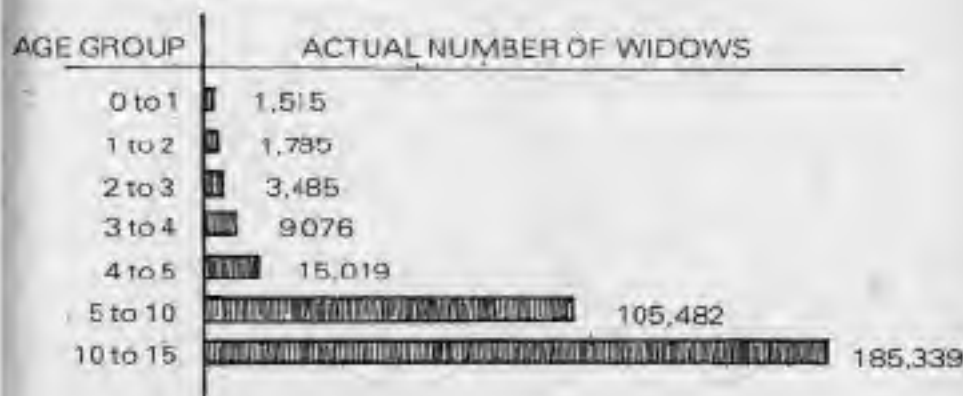
The problem of child marriages and enforced widowhood can be understood properly if we look at some figures:

The **Census Report for India of 1931** gave the following figures of the number of girls who were married and were **under 15 years old**:



We see that nearly one girl in every 100 girls of less than one year of age was married.

And the direct consequence of this was the number of **child widows**:



Even today the condition of widows is pathetic. The 1981 census revealed that there are 80,000 widows under the age of 20... and more than 23 million widows in India — 20,000 destitute widows in Varanasi alone....



Social reformers like ISHWARCHANDRA VIDYASAGAR, the famous champion of widow remarriage, exposed the hypocrisy of these so-called religious leaders through their pamphlets and their campaign for reforms did succeed finally.....

Despite all the opposition the Bill was passed. In **1856** widows were legally allowed to remarry.... And on **December 7, 1856** the **first widow remarriage** was celebrated in Calcutta. Here is a contemporary account of the marriage of Kalimati Debi with Shrischandra Vidyaratna:

"In the cold season of the year 1856 took place the first remarriage of a Hindu widow, celebrated in the house of Babu Rajkrishna Bahari. I shall never forget that day. When Vidyasagar Mahashaya came with his friend, the bridegroom, at the head of the procession of the crowd of spectators was so great that there was not an inch of moving space in the whole street....."

After the ceremony it became the subject of discussion everywhere, the bazars and the shops, in the streets, in public squares, in students' lodging houses, in drawing rooms, in offices and in distant villages, where even women earnestly discussed it among themselves.

The weavers of Santipur issued a peculiar kind of women's saris which contained woven along its borders the first line of a newly composed song: May Vidyasagar live long."

Under the pressure of the social reformers the British rulers were forced to pass a series of laws making various inhuman practices illegal:



1829 Sati outlawed
1856 Widow remarriage made legal
1870 Female infanticide banned
1872 Special Marriage Act passed to allow inter-community marriages
1891 Age of consent raised to 12 years
1929 Child Marriage Restraint Act passed
1921 Women get right to vote in Madras Province
1937 Women get limited right to property



And then came INDEPENDENCE. And a body of men and a few women sat in the **CONSTITUENT ASSEMBLY** to write the CONSTITUTION of INDEPENDENT INDIA.

This was an opportunity to do away with discrimination between men and women based on religion and to give our country a new civil code....a secular law which would incorporate the spirit of **new India**...After all millions of women had taken part in the long struggle for **Independence** from colonial rule. They had a right to enjoy the fruits of their struggle.....



That is not what the Constituent Assembly felt. They talked about equality for all citizens but denied women that Right in the name of Freedom of Religion

Did no one speak out? Of course they did. One of them was a women member **Rajkumari Amrit Kaur**. She said the way Article 25 was worded (see page 23) it would make future social legislations impossible. She wrote:



"... Everyone is aware how many evil practices, which she would like to abolish, are carried on in the name of religion e.g. purdah, polygamy, caste disabilities, animal sacrifice, dedication of girls to temples, to mention a few."

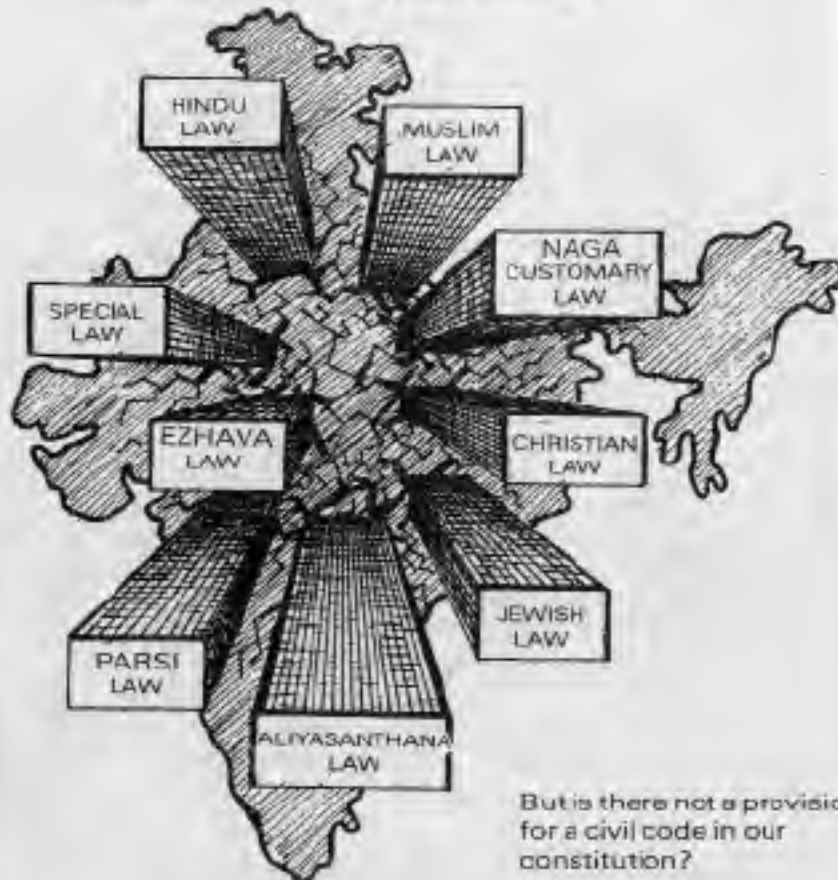


She felt freedom of religion was "**amply assured**" by **Article 19** guaranteeing freedom of speech and expression. (see page 22)

CHAUDHRY HYDER HUSSAIN (Muslim lawyer of Lucknow) wrote in AIR (J) 68/1948

"Living under the British rule for about two centuries we have come to consider it only natural for Hindus to be governed by Hindu Law, and Muslims to be governed by Muslim Law; but it is wholly a medieval idea and has no place in the modern world....."

In a Minute of Dissent **M R Masani, Hansa Mehta** and **Amrit Kaur** said that they wanted a uniform civil code because "one of the factors that has kept India back from advancing to **nationhood** has been the existence of personal laws based on religion which keep the nation divided into watertight compartments in many aspects of life."



But is there not a provision for a civil code in our constitution?

Yes but it is part of Part IV which deals with Directive Principles of State Policy. **Article 44** states:
"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

But these Directive Principles are only guiding principles and are NOT enforceable in a court of law.....

The next question which arose was about having one code for the Hindus and of giving at least Hindu women the right to property. In **1941** a Committee was set up called the **Hindu Law Committee** under the Chairmanship of BN Rau...

In 1948 on the basis of the Committee's recommendations the **Hindu Code Bill** was introduced in Parliament and debated on the floor of the House



And suddenly on the eve of the first elections in 1951 the Bill was **DROPPED**. Prime Minister Jawaharlal Nehru said there was too much opposition.....





It was on this issue that women found great support from **Baba Saheb Ambedkar**, the then Law Minister who **RESIGNED** on this issue.... On his resignation from the Cabinet he gave his reasons. They are reproduced here so that we can see how the Parliament of Independent India deprived its women citizens of even basic rights....

I will now deal with a matter which has led me finally to come to the decision that I should resign. It is the treatment which was accorded to the Hindu Code. The Bill was introduced in the House on the 11th April, 1947. After a life of four years it was killed and died (I wept and wept after 4 clauses of it were passed. While it was before the House it lived by fits and starts). For full one year the Government did not feel it necessary to refer it to a Select Committee. It was referred to the Select Committee on 9th April, 48. The report was presented to the House on 12th August, 48. The motion for the consideration of this Report was made by me on 2nd August, 48. It was merely for making the motion that the Bill was kept on the Agenda. The discussion of the motion was not allowed to take place until the February Session of the year 1949. Ever then it was not allowed to have a continuous discussion. It was distributed over 10 months, 4 days in February, 1 day in March and 2 days in April, 1949. After this one day was given to the Bill in December, 1949, namely the 19th December on which day the House adopted my motion that the Bill as reported by the Select Committee be taken into consideration. No time was given to the Bill in the year 1950. Next time the Bill came before the House on 5th Feb., 1951 when the clause by clause consideration of the bill was taken. Only three days 5th, 6th and 7th of February were given to the Bill and left there to rot.

This being the last session of the present Parliament, the Cabinet had to consider whether the Hindu Code Bill should be gone through before this Parliament ended or whether it should be left over to the new Parliament. The Cabinet unanimously decided that it should be put through in this Parliament. So the Bill was put on the Agenda and was taken up on the 17th September, 1951 for further clause by clause consideration. As the discussion was going on the Prime Minister put forth a new proposal, namely, that the Bill as a whole may not be gone through within the time available and that it was desirable to get a part of it enacted into law rather than allow the whole of it to go to waste. It was a great wrench to me. But I agreed, for, as the proverb says "it is better to save a part when the whole is likely to be lost." The Prime Minister suggested that we should select the Marriage and Divorce Act. The Bill in its truncated form went on. After two or three days of discussion of the Bill the Prime Minister came up with another proposal. This time his

proposal was to drop the whole Bill even the Marriage and Divorce portion. This came to me as a great shock - a bolt from the blue. I was stunned and could not say anything. I am not prepared to accept that the dropping of this truncated Bill was due to want of time. I am sure that the truncated Bill was dropped because other and more powerful members of the Cabinet wanted precedence for their Bills. I am unable to understand how the Benares and Aligarh University Bills and how the Press Bill could have been given precedence over the Hindu Code even in its attenuated form? It is not that there was no law on the Statute Book to govern the Aligarh University or the Benares University. It is not that these Universities would have gone to rack and ruin if the Bills had not been passed in this session. It is not that the Press Bill was urgent. There is already a law on the Statute Book and the Bill could have waited. I got the impression that the Prime Minister although sincere had not the earnestness and determination required to get the Hindu Code Bill through.

In regard to this Bill I have been made to go through the greatest mental torture. The aid of Party Machinery was denied to me. The Prime Minister gave freedom of Vote, an unusual thing in the history of the Party. I did not mind it. But I expected two things. I expected a party whip as to time limit on speeches and instruction to the chief whip to move closure when sufficient debate had taken place. A whip or time limit on speeches would have got the Bill through. When freedom of voting was given there could have been no objection to have given a whip for time limit on speeches. But such a whip was never issued. The conduct of the Minister for Parliamentary Affairs who is also the Chief Whip of the party in connection with the Hindu Code to say the least has been most extraordinary. He has been the deadliest opponent of the Code and has never been present to aid me by moving a closure motion. For days and hours filibustering has gone on a single clause. But the Chief Whip whose duty is to economise Government time and push on Government Business has been systematically absent when the Hindu Code has been under consideration in the House. I have never seen a case of Chief Whip so disloyal to the Prime Minister and the Prime Minister so loyal to a disloyal whip. Notwithstanding this unconstitutional behaviour the Chief Whip is really a darling of the Prime Minister. For, notwithstanding his disloyalty he got a promotion in the Party organisation. It is impossible to carry on in such circumstances.

It has been said that the Bill had to be dropped because the opposition was strong. How strong was the opposition? This Bill has been discussed several times in the Party and was carried to division by the opponents. Every time the opponents were routed. The last time when the Bill was taken up in the Party Meeting out of 120 only 20 were found to be against it. When the Bill was taken in the Party for discussion 44 clauses were passed in about 3-1/2 hours time. This shows how much opposition there was to the bill within the party. In the House itself there have been divisions on three clauses of the Bill 2, 3 and 4. Every time there has been an overwhelming majority in favour even on clause 4 which is the soul of the Hindu Code.

I was, therefore, quite unable to accept the Prime Minister's decision to abandon the Bill on the ground of time. I have been obliged to give this elaborate explanation for my resignation because some people have suggested that I am going because of my illness. I wish to repudiate any such suggestion. I am the last man to abandon my duty because of illness.

It is no coincidence that Ambedkar was a member of the scheduled caste and a leader of the Buddhist movement among the Dalits.....

In **1956** and later in **1976** some changes were brought in Hindu Law... but women still did not get equal rights. All over the country women continued their struggle for a uniform civil code which would give equal rights to men and women within the Family...

Even the idea that men and women should have equal rights within the family is not accepted by the Law. Listen to a senior Judge of the Delhi High Court:

"Introduction of constitutional law in the home is most INAPPROPRIATE. It is like introducing a bull in a china shop. It will prove to be a ruthless destroyer of the marriage institution and all that it stands for. In the privacy of the home, and the married life neither Article 21 nor Article 14 has ANY PLACE. It is a sensitive sphere which is at once most intimate and delicate the introduction of the cold principles of constitutional law will have the effect of weakening the marriage bond. The introduction of constitutional law into the ordinary domestic relationship of husband and wife will strike at the very root of that relationship and will be a fruitful source of dissension and quarrelling."



And the **SUPREME COURT OF INDIA** **UPHELD** this view. And that is the **LAW OF THE LAND**.....

Why does the Honourable Judge think that there is **no** place for the right to **EQUALITY** and **PERSONAL LIBERTY** (Articles 14 and 21) within the family?

This brings us to the second part of our book which will unravel the mystery of how the **Family** is the source of our oppression and of our unequal status and how the **LAW** upholds this injustice.....



The Hon'ble Judge says if women get equality and personal liberty within the family it will lead to quarrels.... Does that mean the Family and Marriage are **based** on **INEQUALITY** and **SUPPRESSION OF LIBERTY**?

THE FAMILY & THE LAW



Yes. And there are many kinds of inequalities. The most glaring is the **DOUBLE STANDARDS OF MORALITY** Once again the basis is religion (See page 29)



Religion says Woman must be purer than **Purity**, patient and all suffering and ever chaste, for the **HONOUR** and the **IZZAT** (reputation) of the Man and His Family depend on her.....



All religions put a premium on the **VIRGIN** bride and emphasize that after marriage the woman must find fulfilment by giving herself up entirely to the good of the husband and his family.....



MOTHERHOOD is put as the woman's ultimate goal so that she may become a complete woman.... religious texts, popular stories, myths and legends all glorify the mother's spiritual strength, her moral superiority and her emotional sensitivity...



A man must socialize and be outgoing and assertive, it helps him to become worldly wise.



It is quite natural and healthy for a man to be attracted to the opposite sex.



Every man has a few vices, they need to relax and enjoy themselves occasionally.

And the Man?

There is no Celebration of His purity... he is not required to suffer in silence, bear up with injustice with a smile.



Women of decent families stay at home, are quiet, reserved and obedient, thus protecting their family honour.

Respectable women stay away from men, preserving themselves for their husband.

Women should not think about themselves, their highest duty is to care for their husband, children and home.



So we see how the family is based on double standards of morality... and this FACT is MYSTIFIED by stories and sermons about the IDEAL WOMAN

The LAW upholds these double standards of sexual morality. The most dramatic example is the law on Prostitution. This is contained in the **Suppression of Immoral Traffic in Women and Girls Act, 1956** (SITA, in short)



The Act does not seek to ban Prostitution as such. It forbids trafficking in girls and women, living off the earnings of a prostitute and disallows prostitution near public places.

Trafficking: living off the earnings of a prostitute and prostitution near public places is an offence!



Although one cannot ban prostitution as such...

The Act also makes provision for setting up of **PROTECTIVE HOMES** for women rescued from brothels. Thousands of such girls are locked away in government-run Nari Niketans all over the country...

These girls are mostly victims of rape, or were sold into prostitution by family members, and some ran away from the hardships and poverty of their homes... In the Nari Niketan they are denied basic amenities, they are abused, humiliated and looked upon as women of low virtue...





But what happens to the man
who raped the woman

....or the person who sold her



....used her



....the man who seduced her
with false promises



....what about the MALE
CLIENT of the prostitute?



The LAW almost invariably
regards the WOMAN-VICTIM as
the GUILTY party and punishes
her... There is no provision for
punishing the male patron... The
Sixty-Fourth Law Commission
Report deals with this
question...



The Report said that prostitution
could not be banned but the law
must

"regulate it so that it may be
kept within its legitimate bounds
without unduly encroaching
upon the institution of marriage
and family."



The Commission considered the question whether "a person who hires a prostitute, be punished?" And it decided that the patron could NOT be punished. In support of its decision the Commission quoted a book written in 1920:

"The professional prostitute being a social outcaste may be periodically punished without disturbing the usual course of society. ...



the man, however, is something MORE than a partner in an immoral act; he discharges important social and business relations, is a father or brother responsible for the maintenance of others, has commercial or industrial duties to meet. He cannot be imprisoned without damaging society (i.e. those with influence in society)."



So a woman prostitute can be locked away even if it means depriving her children of their source of livelihood...



...this was in 1975, the U.N. YEAR OF THE WOMAN!

If we see the Law of rape in operation, we see how the Law treats the woman-victim as the accused.

The most famous case was of **Mathura**, a young tribal girl of a village in Maharashtra.... This girl of about 16 was in love with a man called Ashok, and she wanted to marry him. Her elder brother objected and lodged a complaint at the Desaijunj police station stating that Ashok and his family had kidnapped Mathura.



At about nine in the night Ashok and his aunt and uncle along with Mathura were brought to the police station on 26th March 1972. Her brother was also present. The police recorded everyone's statements and told them to leave.... as Mathura was also going out, Head constable Ganpat caught hold of her hand.



The lights of the police station were put off and Ganpat raped Mathura in the latrine and Police constable Tukaram molested her... By this time Ashok and Gama were waiting outside helplessly....

An angry crowd collected together outside the police station and a complaint against the policemen was lodged. Mathura was medically examined... The trial began. The **Sessions Court** declared the policemen innocent and Mathura a liar. It held that

SESSIONS COURT

even if there was sexual intercourse there was no rape because there was no proof that Mathura had resisted....



In a rape case the woman victim has to prove that she did not consent. Read **Section 375** of the Indian Penal Code which defines the offence of RAPE:



"A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:

First.—Against her will

Secondly.—Without her consent

Thirdly.—With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent, when at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under sixteen years of age.

Explanation: Penetration is **sufficient** to constitute the sexual intercourse necessary for the offence of rape.

Exception: Sexual intercourse by a man with his own wife, the wife not being under 18 years of age is not rape.

The Bombay High Court reversed the finding and sentenced Tukaram and Ganpat on the grounds that since both these 'Gentlemen' were perfect strangers to Mathura, it was highly unlikely that "She would make any overtures or invite the accused to satisfy her sexual desires", nor could she have resisted her assailants, and the policemen had "taken advantage of the fact that Mathura was involved in a complaint filed by her brother and she was alone in the dead hour of the night" in a police station. She could not, in any probability, have consented to intercourse.

The policemen went in appeal to the Supreme Court of India and the highest court of justice acquitted the policemen....

... the Supreme Court held that as there were no injuries shown by the medical report. The story of "stiff resistance having been put up the girl is all false" and the "alleged intercourse was a peaceful affair."

The court disbelieved the testimony of the girl that she shouted "immediately after her hand was caught by Ganpat", that she was not allowed to shout when being taken to the latrine, that she raised an alarm even when her underwear was loosened. The court held that "cries and alarms are, of course, a concoction her part," because she made no attempt to resist when Ganpat held her hand. "If that be so, it would be preposterous to suggest that... she would be so overawed by the fact of the appellants being persons in authority, or that she was just emerging from a police station, that she would make no attempt at all to resist."

The court holds that only the "fear of death or hurt" can vitiate consent for sexual intercourse. There was no such finding recorded.

While the High Court thought there was such evidence, the Supreme Court did not.

Tukaram too was not found guilty because, the fact that he was present when the incident took place and left soon after it, is "not inculpatory and is capable of more explanations than one."

But these other explanations are not at all indicated in the Supreme Court's judgement.

HIGH COURT



Being alone at night and
fearing personal harm,
she could not have
resisted her assailants.

SUPREME COURT



Since she did not
RESIST, she must have
CONSENTED.



The Supreme Court judgement aroused anger and indignation... Four law teachers wrote an open letter to the Chief Justice They wrote:

Your Lordship, this is an extraordinary decision sacrificing human rights of women under the law and the Constitution. The Court has provided no cogent analysis as to why the factors which weighed with the High Court were insufficient to justify conviction for rape. She was in the police station in the "dead hour of night". The High Court found it impossible to believe that she might have taken initiative for intercourse. The fact remains that she was asked to remain in the police station even after her statement was recorded and her friends and relations were asked to leave. Why? The fact remains that Tukaram did nothing whatsoever to rescue the girl from Ganpat. Why? The court says in its narration of facts, presumably based on the trial court records, that Tukaram was intoxicated. But this is not considered material either. Why? Why were the lights put out and doors shut?

Your Lordship, does the Indian Supreme Court expect a young girl, 14-16 years old, when trapped by two policemen inside the police station, to successfully raise alarm for help? Does it seriously expect the girl, a labourer, to put up such stiff resistance against well-built policemen so as to have substantial marks of physical injury? Does the absence of such marks necessarily imply absence of stiff resistance? If anything it is Ganpat's body which would have disclosed marks of such resistance by Mathura, like clawing and biting.

Maybe, the evidence of shouts for help and 'stiff resistance' is all "a tissue of lies". But does the absence of shouts justify an easy inference of consensual intercourse in a police station? (Incidentally, what would be the Court's reaction if the victim was dumb or gagged?) In any event, how could the fact of shouting within closed doors of a police station be established in such cases?

In restoring the decision of the Sessions Judge, does the Supreme Court of India really believe with him that Mathura had "invented" the story of rape, and even the confinement in the police station, in order to sound "virtuous" before Ashok? Does the Court believe that Mathura was so flirtatious that even when her brother, her employer and her lover were waiting outside the police station that she could not let go the opportunity of having fun with two policemen and that too in the area adjoining a police station latrine? Does it believe with the Sessions Judge that Mathura was "habituated to sexual intercourse" to such an extent? And therefore further think that the semen marks on Mathura's clothing could have come from further sexual activities between the police incident and the next morning when she was medically examined? What about semen marks on Ganpat's trousers? Why this double standard? Ganpat's sexual habits give him the benefit of doubt of having 'raped' Mathura; her sexual habits make the Court disbelieve the story of the rape altogether!

We also find it surprising that the Supreme Court should have only focused on the third component of section 375 of the Indian Penal Code, which applies when rape is committed with the woman's consent, when "her consent has been obtained by putting her in fear of death or hurt". But the second component of Section 375 is when rape occurs without her consent. There is a clear difference in law, and commonsense, between 'submission' and 'consent'. Consent involves submission; but the converse is not necessarily true. Nor is absence of resistance necessarily indicative of consent. It appears from the fact as stated by the Court and its holdings, that there was submission on the part of Mathura. But where was the finding on the crucial element of consent?

Women all over the country organized protests and demonstrations. They began studying the law and discovered some startling facts about the bias in law...

One study of 400 rape cases



CATEGORY	NO OF CASES
Cases reported to police stations	400
Cases registered under rape	382
Cases sent to Sessions Court	298
Sessions Trial completed	109
Judgement	109
Convicted	30
Acquitted	79
Appeals in High Court	98

We have seen how those convicted by the lower courts get acquitted by the Higher Courts



Women demanded that the law of rape be changed. Under pressure the Government asked the

Law Commission to go into the question. The 84th Report's recommendations included:

- the law must recognize that a husband can rape his wife (and marriage does not give the man the right to have sexual intercourse with his wife against her wishes).
- the previous sexual history of the woman should not be brought on record (as they did with Mathura).
- if the police do not record the woman's complaint it should be treated as a major offence on the part of the police.
- no woman should be arrested at night or kept at the police lock-up.
- if the woman states she did not consent to sexual intercourse the court should presume that the victim did not consent.

The Government did introduce a Bill in Parliament in 1980 to amend the law on rape. The M.P.'s took three years to discuss and debate the Law Commission's recommendations and finally passed watered down amendments.

The amendments include:

- the trial will be secret, which means possibility of social protest becomes impossible.
- the minimum punishment has been raised in cases where public servants are involved such as policemen, jail or hostel superintendent, staff member of a hospital in a case of a woman under their charge, custody or care
- provision for summary trial



Women learnt that both society and the law made the VICTIM feel guilty, if she was raped something was wrong with HER... she had a lover, like Mathura or was a deserted wife like Rameeza Bee any woman who did not fit into the model of the IDEAL WOMAN... then she was free game for rapists or molesters.



However, if she is a MARRIED woman and she on her own walks out and lives with another man the law does not punish HER. The law punishes the other man. See how the law dares the offence of Adultery under Section 497 of the Indian Penal Code.

"Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such cases the wife shall not be punishable as an abettor."

And **Section 498** makes it an offence for a man to entice or detain another man's wife with the intention of having sexual intercourse with her.

But is the woman not a party to the crime, if it is a crime? Suppose my husband drinks too much and I on my own walk out and live with another man, won't I also be guilty in the eyes of the law?



He stole my wife!



No. The Supreme Court of India held that:



*"The provisions for Section 498 like those of Section 497 are intended to protect the rights of the husband and not those of the wife. The gist of the offence under Section 498 appears to be the **deprivation of the husband of his custody and his proper control over his wife** with the object of having illicit intercourse with her. The consent of the wife to deprive her husband of his proper control over her would not be material."*

But she came on her own will...



This judgement was given in 1959 and the views confirmed by the Supreme Court in 1965, which held these Sections do not violate the fundamental rights to equality and personal liberty even if a married woman has no right to prosecute her husband's girl friend....



«Don't our Hon'ble Supreme Court Judges see that these double standards of morality are an OBVIOUS violation of our FUNDAMENTAL RIGHTS guaranteed under our Constitution?»



It looks as if they don't. Perhaps the reason is that our Constitution itself does not. One Law Professor analysed the Constitution and wrote:

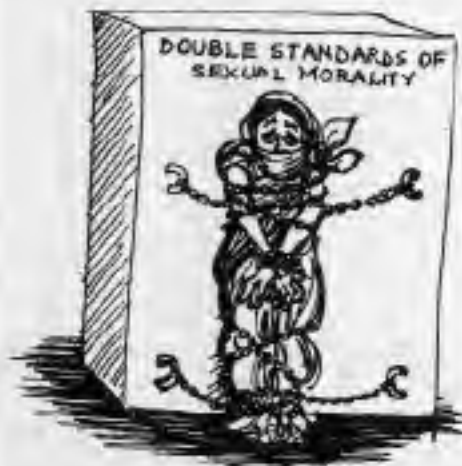


"The Constitution does not see patriarchy as problematic; it perceives it as natural. The Indian Constitution codifies and contemplates a male dominated Indian society."



What is PATRIARCHY? There is some controversy about its exact nature but one general definition is: "the social organization of the family, the community and the state in such a way that **male power** is reinforced and perpetuated"





In order to perpetuate and reinforce male power man needs to have control over woman's body, her reproductive powers so that he can have control over the children and the family.... that explains why there are two standards of sexual morality (see pages 50 & 52).



They also need to control the economic resources of the family. This is done by the special kind of family which we call the **patriarchal family**

...in which a woman after marriage goes to live in the husband's home,



...and the woman wears the symbols of her marital status

...and she and her children take on the man's family name,



...the head of the family is the eldest male and the property is inherited through the male line and till recently women had almost no right to property.....



If we look at the Constitution as it was originally framed, we will see that the makers of the Constitution included the right to property as a Fundamental Right under Article 19 to every citizen (see page 34) but women were denied the right to property on the ground that religion did not permit it and we know that freedom of religion is a fundamental right....



So the Constitution makers did not look upon Indian women as full CITIZENS? Don't we have any right to property?



Yes we do. But our rights are different depending on our religion.

But no matter to which religious community we belong NONE of us have equal rights to property in law.



I have equal rights to my father's property but not to the ancestral property. I cannot be the karta or a member of the coparcenary or even ask for a partition... even these rights are seldom given to us.

In accordance with the Shariat Act, I get only half of the man even if we are heirs in the same category e.g. get half the amount of that which my brother gets.



"None of us tribal women have equal right to property under our customary law."

And so in a patriarchal family the woman is reduced to economic dependence.

And woman's work within the family is not recognized as work.



The woman is looked upon as a BURDEN. So when the burden goes from her father's house to her husband's house, her in-laws have to be compensated for taking on a burden. That compensation is called DOWRY.



In some societies where a woman's work is recognized, they have the custom of BRIDE PRICE. Among our tribal people the husband has to buy his bride.



Isn't giving and taking of dowry PROHIBITED by law?

Yes. There is a DOWRY PROHIBITION ACT, 1961.

But till we women are looked upon as commodities to be BOUGHT, SOLD, USED, BURNT, can we really hope that the law can change people's thinking?



What if a woman decides to work and stand on her own feet? After all **Article 19 (1) (g)** guarantees every citizen the right to carry out their occupation (see page 34)

Whenever a woman has decided to work and it has meant that she has to live away from her husband the courts have held that she does not have the right to work or an equal right with her husband to decide where they will live after marriage (see Article 19 (1) (d) and (e) on page 34)



The courts do this by granting the husband a decree for **restitution of conjugal rights**. The marriage laws of all religious communities provide for this... it means that the husband has a right to sexual cohabitation and the courts can **force** the wife to cohabit with him...



Yes But the question is can law force two people to live together when they do not want to? A Judge of the Andhra High Court held that this provision is a violation of the right to personal liberty.

He said:



The remedy of restitution of conjugal rights... is a savage and barbarous remedy, violating the right to privacy and human dignity guaranteed by Article 21 of the Constitution.

But within a few months the Supreme Court overruled this judgement and held that the provision for restitution of conjugal rights

"Serves a social purpose as an aid to the prevention of break-up of marriage."



And so the woman is caught within the four walls of her home... and society imposes yet another restriction on her. She is told not to speak out against the oppression and injustice in public because family matters are PRIVATE.



This notion has been reinforced by the passing of the **Family Courts Act, 1984**. This Act is to

"Provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs..."

Who will be responsible for bringing about conciliation? Judges.

Specially those "committed to the need to protect and preserve the institution of marriage and to promote the welfare of children..."



Lawyers will not ordinarily be allowed...



The proceedings will be in camera (secret)



and once an agreement is reached between the parties, there will be no appeal...

But what is wrong with CONCILIATION?

Nothing... IF the two parties are equal... but we have seen that in fact family disputes arise as a result of **INEQUALITIES** within the family and so adjustment or settlement means that the woman will have to **ADJUST** to this **INEQUALITY**



You both must adjust to your married lives and not cause disputes.



The new law like the other family law does not recognize this fact... and making the proceedings in camera will mean the possibility of **SOCIAL PROTEST** will become remote.

The basic idea behind Family Courts is that family disputes are a private matter and they should be heard in privacy... as it is done within the family itself...



And so women are taught to bear up with every humiliation, beatings, molestation, and even be burnt but not speak out because the **HONOUR** of the family will be put in jeopardy. And thus the woman becomes very vulnerable to violence within the four walls of her home — away from public gaze.....

When the woman goes to the police station to lodge a complaint she is most often told not to bring family matters to the police or the police themselves try to reconcile the husband and wife and by that time all evidence is destroyed...



You should be glad you are respectably married, and not make a fuss over small things!

But my husband tried to kill me!

Shh... family matters must be kept private. I'll take you home... you must make up with your husband.



Even in those cases where there is evidence, the courts choose not to believe the woman, even her DYING DECLARATION is not believed. In one case a young woman called Shanni Kaur, mother of a one year old son, died of burns in a Delhi hospital. Before dying she gave her statement THREE times, once to the police and twice to two different doctors stating that her husband had poured kerosene on her and burnt her.



The FIRST dying declaration was disbelieved by the court on the ground



the doctor had taken down her statement before he had medically examined her to ensure she was fit enough to make the statement.



The SECOND dying declaration was not believed because the court held that



the police "did not inspire confidence" because they may have recorded the statement with a view to getting a reward.



The THIRD dying declaration was not taken into account even though the second doctor said he had examined the patient and found her fit to make a statement. The Sessions Court held that



since Shanni Kaur was "crying with pain... it is difficult to believe that Shanni Kaur was in a fit state of mind to make a statement."



In all three declarations Shanni Kaur had clearly named her husband as the one who poured kerosene....

This bias against women was most blatant in Sharad Birdhi and Sarda's case. Sarda, a chemical engineer, was found guilty of murdering his 20-year old wife Manjushree by suffocation and oral administration of potassium cyanide. He was found guilty by BOTH the Sessions Court and the Bombay High Court. He appealed to the Supreme Court....



THE SUPREME COURT took note of the fact that the High Court had mentioned 17 circumstances which proved his guilt, including:

- written dying declarations by Manjushree in the form of letters written to her sister and her friend
- her oral statements made to her father, mother, sister and friend about her husband's ill treatment.
- Sarda's extra-marital affair

But the Supreme Court ACQUITTED Sarda. This is what the learned Judge said while acquitting him:

"Manju (from the evidence on the record) appears to be not only a highly sensitive woman who expected whole hearted love and affection from her husband but having been thoroughly disappointed out of sheer disgust, frustration and depression she may have chosen to end her life. At least this possibility is clearly gleaned from her letters and mental attitude.... she hinted that her husband was so busy that he found no time for her. A hard fact of life, which cannot be denied, is that some people in view of their occupation or profession find very little time to devote to their family. Speaking in a light vein, lawyers, professors, doctors and perhaps Judges fall within this category and to them Manju's case should be an eye-opener."



Sarda was acquitted, released from custody and set at liberty. He flew away to America and got married again....

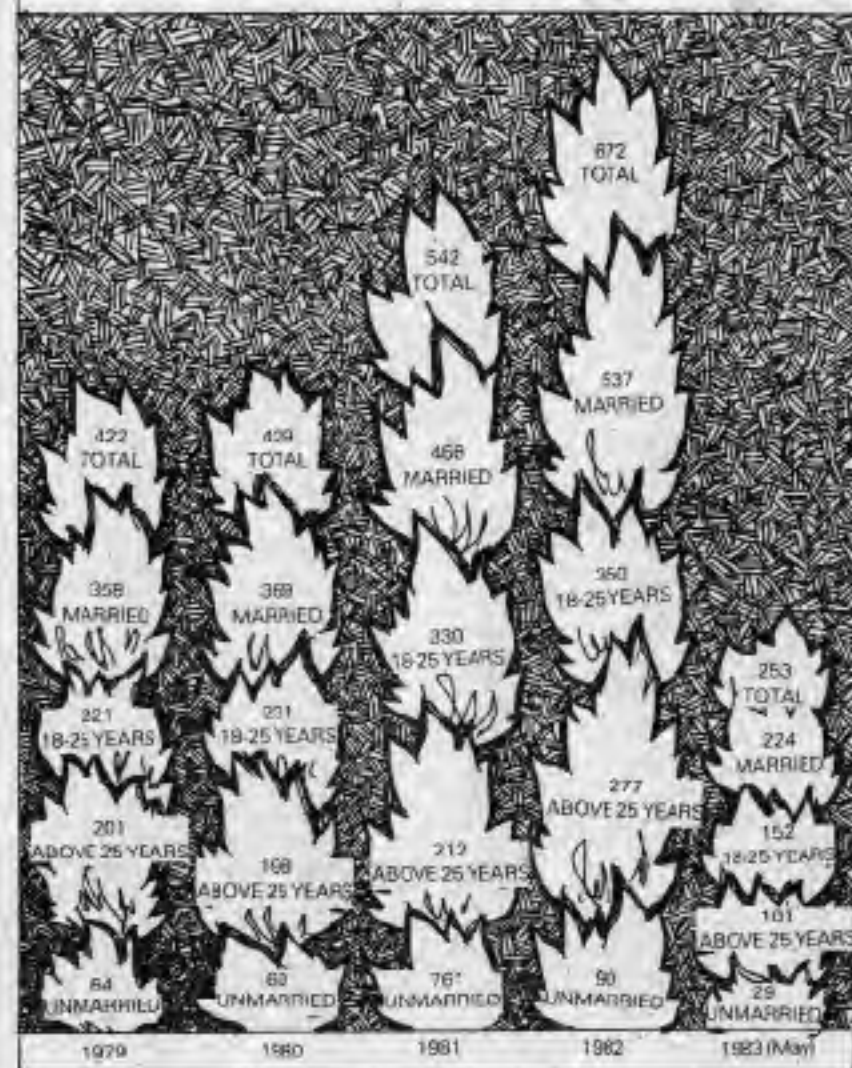
Women all over Maharashtra organized protests, demonstrations and public meetings. They put up a poster exhibition entitled "Mee Ek Manjushree" (I am another Manjushree)... At least 60,000 people saw the exhibition and there were spontaneous bandhs in several towns... within 15 days 10,000 signatures were collected demanding a review of the judgement.



The Supreme Court rejected the review petition as it had done in Mathura's case five years back...

A look at police records reveal shockingly high death rates among young women, due to burning. The inadequacy of the investigative machinery is revealed by the fact, that 690 women died in 1983, of whom 270 were between 18-25 years of age — out of this 23 were alleged "dowry burnings" ... In Delhi alone

Figures drawn for the years 1979 to May 1983





"Does this mean we can expect no justice from the Courts?"

No. That is not quite true. Look at Mary Roy, the middle aged school teacher from Kerala. She challenged Syrian Christian law under which daughters got almost no part of their father's property. And she won.



The Supreme Court repealed the old Christian laws and because of Mary Roy Christian women in Kerala now have equal right to property as their brothers.

Then there is the famous Shah Bano's case. Shah Bano is an old woman who was thrown out of her home by her husband who refused to give her any money for maintenance.



Shah Bano filed a case in April 1978 under section 125 of the Code of Criminal Procedure in the local courts at Indore.

Shah Bano's husband argued that he had no obligation to maintain his divorced wife under Muslim personal law.

Shah Bano argued that all divorced women had a right to maintenance under the criminal law in India. Read Section 125 of the Criminal Procedure Code, 1973:

Section 125: ORDER for maintenance of wives, children and parents.

- (1) If any person having sufficient means neglects or refuses to maintain—
- (a) his wife, unable to maintain herself, or
 - (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
 - (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or
 - (d) his father or mother, unable to maintain himself or herself,

a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.



Shah Bano fought for her right all the way up to the Supreme Court. It took her seven long years. But she finally won in 1985.

Women all over the country supported Mary Roy and Shah Bano. Meeting rallies, demonstrations were held all over the country in solidarity with these two brave and determined women who had won such important rights for their sisters.





But there were people who felt threatened by our victories. They could not bear to see women uniting together against religious oppression. These people were the self appointed guardians of religion.

These so called religious leaders turned the attention of everyone from the real problem — oppression of women in the name of religion. They turned it into a communal question!



Selfish Maulanas blamed Shah Bano for being anti-Muslim, and Bishops said Mary Roy was violating her religion. Hindu communalists fanned the communal flames by hailing the Supreme Court judgements not because they supported Shah Bano's cause but because they looked upon it as anti-Muslim.

Muslim communal forces demanded that the law be changed! They said the Supreme Court had no business to interfere in their personal laws...

And the government because of its own narrow political reasons gave in to these communal demands and introduced a Bill in Parliament which took away the divorced Muslim woman's right to maintenance.



There was a public outcry against this injustice. One Memorandum signed by dozens of Muslim intellectuals, poets, film personalities said:

"We, the undersigned
DEMAND

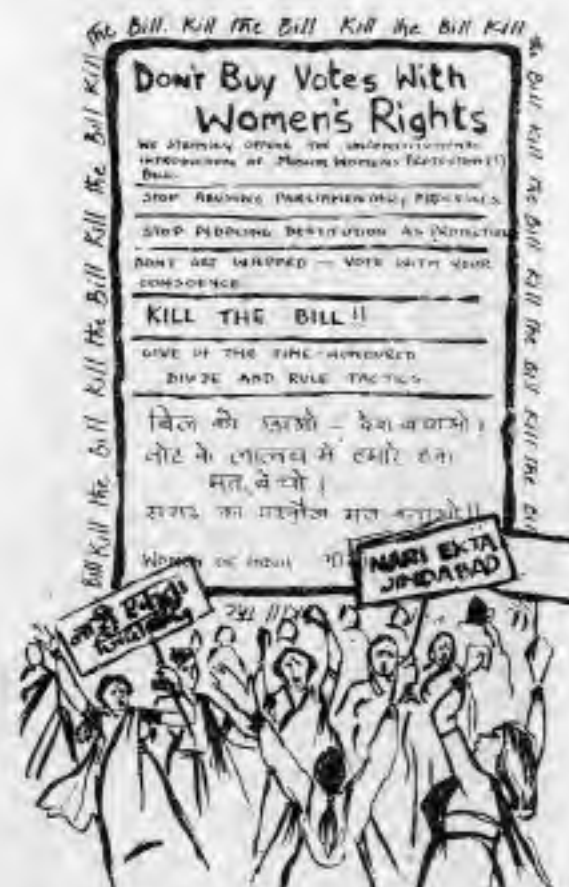
- (1) that section 125 of the Cr P C shall not be changed.
- (2) that the right of divorced Muslim women to claim maintenance from their husband or former husband shall be preserved.

HOLD

- (1) that the exoneration of the husband from all responsibility for maintenance of divorced women is contrary to the provisions and spirit of Section 125 of the Cr P C which is meant of indigent women and seeks to prevent destitution.
- (2) that the Government must ensure that rights guaranteed by the Constitution to women be upheld.

Khwaja Ahmad Abbas (Writer & Film maker)
Salim Ali (Biologist, Ornithologist, MP)
Moonis Raza (Vice-Chancellor, Delhi University)
Abid Husain (Member, Planning Commission)
Owaid Siddiqui (Professor, TIFR)
Rais Ahmed (Educatorist, Ex-Vice Chairman, UGC)
Shabana Azmi (Film Actress)
Javed Akhtar (Film Script writer)
Sardar Jafri (Poet)
Saeed Akhtar (Film Maker)
Rameezuddin Khari (Professor, JNU)
Irfan Habib (Professor, AMU)
Basim Hussain Zaidi (Former V.C., Aligarh Muslim University)
M.A. Hameed (Speaker, W.B. Assembly)
Badrudin Tyabji (Ex-ICS)
E. Akbar (Ex-Director, National School of Drama)
Zahoor Raza (Secretary, Dept. of Women Development)
A. Rahman (Scientist)
Ashfaq Ali Engineer (Director of Institute of Advanced Studies)
Rashid Taha (Journalist)
Dawood Lathi (Supreme Court Advocate)
Rameezuddin Akbar (Senior Fellow)
Shahryar (Poet)
Ghulam Sheikh (Poet)
Kamilla Tyabji (Chairman, Women's India Trust)
M.S. Aggarwal (Professor, JNU)
K.J. Kishor (Director, Mass Communication)
Salman Razaie (IAS)
Saeed Naezi (Journalist)

Salim Faruqi (Poet)
Sema Mustafa (Journalist)
Madhul Ahmad (Professor, AMU)
Masrur Ali (Film Maker)
Mubtadi Hameed (Professor)
Anwar Azam (Writer)
Najma Zahoor Bano (Professor, JNU)
Anwar Javed (Journalist)
Muzirul Hasan (Professor, Jamia Millia)
Fajal Akbar (Theatre Director)
Zahida Zaidi (Professor, AMU)
Sajida Zaidi (Professor, AMU)
Iqbal Alam Khan (Professor, AMU)
Shameed Hussain (Painter)
Hassan Suroor (Journalist)
Roshan Akbar (Director, Art Gallery)
Moin Shahn (Professor, Meerut University)
Anwar Akbar (Theatre Director)
Shahid Khatun (Film Actress)
Ali Bano (Fellow, CSRS)
Jale Zahoor (Ambassador, Consul)
Anam Durrani (Professor, AMU)
V.M. Aziz (Film Writer)
Shahid Raza (Writer)
Javed Alam (Reader, Himachal University)
Salina Tyabji (Editor, DPM)
Hassan Khatun (Documentary Film maker)
Muzamir Hussain (Artist)
Fatima Ali Tyabji (Director, Advertising Agency)
Sahana Agha (Personal Executive, TNA)
Sahar Hussain (P. College, Delhi University)
Zoya Hassan (Reader, JNU)
Zaki Zahoor (Social worker and many others)



Women's organizations all over the country organized rallies, meetings and protests against the Bill. They even met the Prime Minister. Their slogan was "Don't Buy Votes with Women's Rights"

The Bill was passed despite this nation wide protest. It was the saddest day for women. It was a great defeat for Indian women's movement against religious oppression. The new Act opened the doors for all obscurantist forces...

And so the law is used to suppress our right to equality and freedom.

We can use the law sometimes but we cannot rely on it to safeguard our rights and interests. We must rely on our strength, to mobilize our sisters, raise their consciousness and build up solidarity among ourselves. Great victories have been won by struggle...

